

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 304 of 2007

Date of Decision: 18.9.2007

M/s Atul Enterprises through Mr. Suraj Parkash Ghai Partner, Sunami Gate, Sangrur.

....Appellant.

Versus

Commissioner of Income Tax, Patiala

...Respondent.

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR.

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. S.K. Mukhi, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

In this appeal by the assessee under Section 260A of the Income Tax Act, 1961 (for short "the Act") order dated 29.12.2006 of the Income Tax Appellate Tribunal, Chandigarh Bench SMC, Chandigarh (hereinafter referred to as "the Tribunal") passed in ITA No. 862/Chandi/2005 relating to the assessment year 2001-02 has been challenged. The assessee has claimed that the following substantial questions of law arise for consideration of this Court:-

- "1. Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the loan was advanced for non-business purpose only

in view of facts and circumstances of the case thereby confirming the order of the CIT (A)?

2. Whether on the facts and circumstances of the case, the Tribunal was justified in holding that since it was in the knowledge of the assessee that entries have not been reconciled therefore addition was rightly made inspite of the fact that the appellant credited the said entries as and when it became aware of the same so the order of the ITAT to this extent was perverse?
3. Whether on the facts and circumstances of the case, the order of the Tribunal is perverse and against the provisions of law?"

Briefly stated, the facts are that the assessee filed its return declaring an income of Rs.40,195/- on 31.10.2001. The assessee gave a loan advance of Rs.17,37,118/- as interest free to its sister concern M/s Pranav Traders after withdrawing the same from its own Credit Cash Account by availing of overdraft facility being provided by its bankers. The bank allowed withdrawal to the assessee and charged interest of Rs.5,13,971/- on the said amount. The Assessing Officer disallowed the deduction of Rs.91,050/- as interest paid on capital borrowed for business purpose allowable under Section 36 (I)(iii) of the Act and further added a sum of Rs.1,86,321/- treating the same as concealed income. The appellant filed an appeal before the CIT (A) who vide its order dated 9.8.2005 partly allowed the appeal by confirming an amount of Rs.1,41,916/- instead of Rs.1,86,321/-.

Against the order of the CIT (A), the assessee filed an appeal before the Tribunal. The Tribunal vide its order dated 29.12.2006 dismissed the appeal upholding the order of CIT (A).

We have heard learned counsel for the appellant and have gone through the record.

A reading of the substantial questions of law as claimed by the assessee shows that the same are as vague as it could be. However, from the record, it is discerned that the assessee had laid challenge to two additions, namely, Rs.91,050/- on account of disallowance of deduction of interest paid on borrowed capital for business purposes which had been claimed as deduction under Section 36 (1)(iii) of the Act on account of interest free loan advance to sister concern and secondly addition of Rs1,41,916/- on account of discrepancy of credit notes from M/s BPL (India) Ltd.

In so far as first addition of Rs.91,050/- on account of advance of interest free loan to M/s Parnav Traders (PT) sister concern of the appellant is concerned the Assessing Officer after analysing the overdraft account during assessment proceedings as well as during remand report had arrived at a conclusion that there existed a direct nexus between the interest free advances and interest bearing overdraft. The Assessing Officer further noticed that sufficient interest free funds were not available with the assessee for making interest free advances to its sister concern. The CIT (A) while rejecting the contentions of the assessee in paras 2.4 and 2.5 of its order dated 9.8.2005 has observed thus:-

“2.4 The facts of the case have been perused. The

interest free advance to sister concern is not for business purpose of the assessee and have been sourced from the overdraft account and the facts are not disputed by the appellant. As regards, the statement of the assessee that he has only one bank account perusal of balance sheet of the appellant as on 31.03.2000 and 31.03.2001 reveals that there were two other bank accounts of the assessee one with PNB account No. 728 in Patiala and the second one with Punjab & Sind Bank. As regards the case law cited by the Ld. Counsel for the appellant it is observed that in the case of M/s India Carbon Ltd. (supra), the Hon'ble Court held that the Tribunal had accepted the findings of the CIT (A) that there was no nexus between the funds withdrawn from cash credit and current accounts and the funds advanced as loan to the subsidiary companies and such findings had not been controverted by the Revenue. The Hon'ble Court held that the findings of the Tribunal are pure findings of fact and, therefore, no questions of law arise. The Hon'ble Court did not lay down any ratio for the allowances of interest u/s 36 (1)(iii) of the Act as the question related only to facts and the Tribunal had held that there was no nexus between interest bearing borrowing

and advances. Therefore, this decision is not of much help to the assessee. In so far as the case of M/s Radico Khaitan Ltd. (supra) is concerned, the Hon'ble Court held that in view of the finding recorded by the Tribunal that the assessee company has sufficient funds other than borrowed money for giving the amount in question as loan to its sister concern, such finding not having been specifically challenged by the revenue, the conditions of section 36 (1)(iii) of the Act have been complied with and the assessee company was entitled to full allowance of the amount of interest paid on borrowed capital. In this case also, it cannot be said that where it is categorically demonstrated that the interest free advance was sourced from interest bearing funds, no disallowance could be made for payment of interest for non-business purpose. Further, the onus lies on the assessee to demonstrate that it had sufficient interest free funds at its disposal to make interest free advances.

- 2.5 In the case of Mir Mohammad Ali (52 ITR 165), the Hon'ble Supreme Court held that to claim deduction in respect of interest paid by the assessee it was for him to prove that each of such loan was utilized for the purpose of business. In

the case of R. Dalmia (133 ITR 169) the Hon'ble Delhi High Court held that the burden of proof for any allowance of interest lay on the assessee. Similar Transport Pvt. Ltd. (61 ITR 480) and M/s Indian Metals & Ferro Alloys (193 ITR 344). In the case of Sanghvi Swiss Refill (85 ITD 59), the Bombay Tribunal held that the flow of funds advanced to sister concern on the date of advance has to be demonstrated to sister concern to show whether interest free or interest bearing funds have been utilized for this purpose. In the case under consideration, the appellant has not disputed that the funds were sourced from the interest bearing overdraft account. The appellant has also not despite giving another opportunity by way of remand proceedings demonstrated that on the date of the advance, it had sufficient liquidity of interest free funds to make the advance. It only tried to make a partial analysis of the balance sheet on the date of each advance to show that it has invested in stocks and its book debts exceeded the overdraft balance of each of these dates. The explanation therefore cannot be accepted. As pointed out by the A.O. and also accepted by the appellant, there is hardly any increase in the unsecured interest free loans

during the year and therefore the advances could not have been made from such interest free loan. In view of the above the action of the Ld. A.O. is upheld.”

The said finding of fact on reappraisal of evidence has been confirmed by the Tribunal.

Now adverted to the second addition which pertains to addition of Rs.1,41,916/-, the observations of the CIT (A) as discussed in para 3.2 are relevant which reads thus:-

“The account of the appellant in the books of M/s BPL had been furnished by the appellant itself during the assessment proceedings. Having done so it is not understood as to how it can be contended that it was not aware of the credits. If indeed it was of view that the amounts were not receivable, it could have taken up the matter with M/s BPL which it did not. Hence, the argument of the appellant is devoid of any merit. However, in so far as the amounts Rs.41865/- and Rs.3540/- are concerned no addition can be made. Barring these two entries the action of the Ld. A.O. is upheld.”

The aforesaid addition had been made on the ground that there appeared discrepancy in the books of M/s BPL and the assessee regarding the said amount as the credit notes issued to the appellant from time to time were entered in the books of M/s BPL but there was

no mention thereof in the books of the appellant. The discrepancy depicted undisclosed income of the assessee. The said addition had been sustained upto the level of the Tribunal.

The Assessing Officer and also the appellate authorities i.e. CIT (A) and the Tribunal having concurrently recorded findings of fact as noticed above, which do not suffer from any misreading or misappreciation of evidence, no question of law much less a substantial question of law arises for adjudication by this Court.

Finding no merit in this appeal, the same is hereby dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

September 18, 2007
gbs

**(M.M.KUMAR)
JUDGE**